

DISTRICT OF COLUMBIA
OFFICIAL CODE
2001 EDITION

Volume 10

Title 17

Review

to

Title 21

Fiduciary Relations and Persons with Mental Illness

JUNE 2013 SUPPLEMENT



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PREFACE

These annual cumulative pocket parts update the District of Columbia Official Code, 2001 Edition, with permanent, temporary, and emergency legislation and judicial constructions contained in annotations. These pocket parts contain the Laws, general and permanent in their nature, relating to or in force in the District of Columbia (except such laws as are of application in the General and Permanent Laws of the United States) in effect as of April 1, 2013.

This Supplement also updates the D.C. Code annotations by including notes taken from District of Columbia cases appearing in the following sources: Atlantic Reporter, 3d Series Supreme Court Reporter Federal Reporter, 3d Series Federal Supplement, 2d Series Bankruptcy Reporter.

Current legislation between pamphlets or pocket parts can be accessed online at www.lexisnexis.com/advance, www.lexisnexis.com/research, and <http://dcclims1.dccouncil.us/lims>.

The unannotated District of Columbia Official Code can be accessed on the District of Columbia Council Website at <http://www.dccouncil.us>.

Later laws and annotations will be cumulated in subsequent annual Pocket Parts.

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TITLE 18. WILLS.

CHAPTER 1. GENERAL PROVISIONS.

§ 18-103. Execution of written will; attestation.

Section references. — This section is referenced in § 1-1001.06a, § 18-105, and § 18-109.

CASE NOTES

ANALYSIS

Execution of will.

—Attestation and subscription by witnesses, execution of will.

Execution of will.

— **Attestation and subscription by witnesses, execution of will.**

Testator's purported will lacked proper attestation and, therefore, was void; statute re-

quired that two or more witnesses attest and subscribe to will in testator's presence, will only bore testator's signature and raised seal of notary public, and affidavits from non-attesting witnesses, who could not verify that they witnessed two attesting witnesses sign will in presence of testator, failed to satisfy statutory requirements for due execution of will. In re Estate of Henneghan, 45 A.3d 684, 2012 D.C. App. LEXIS 299 (2012).

TITLE 19. DESCENT, DISTRIBUTION, AND TRUSTS.

Chapter

6. Nonprobate Transfers on Death; Uniform Law.

15. Uniform Disclaimer of Property Interests.

CHAPTER 6. NONPROBATE TRANSFERS ON DEATH; UNIFORM LAW.

Subchapter I. Provisions Relating to Effect of Death

Sec.

19-601.02. Liability of nonprobate transferees for creditor claims and statutory allowances.

Subchapter IV. Uniform Real Property Transfers On Death

19-604.01. Short title.

19-604.02. Definitions.

19-604.03. Applicability.

19-604.04. Nonexclusivity.

19-604.05. Transfer on death deed authorized.

19-604.06. Transfer on death deed revocable.

19-604.07. Transfer on death deed nontestamentary.

19-604.08. Capacity of transferor.

19-604.09. Requirements.

Sec.

19-604.10. Notice, delivery, acceptance, consideration not required.

19-604.11. Revocation by instrument authorized; revocation by act not permitted.

19-604.12. Effect of transfer on death deed during transferor's life.

19-604.13. Effect of transfer on death deed at transferor's death.

19-604.14. Disclaimer.

19-604.15. Liability for creditor claims and statutory allowances.

19-604.16. Optional form of transfer on death deed.

19-604.17. Optional form of revocation.

19-604.18. Uniformity of application and construction.

19-604.19. Relation to Electronic Signatures in Global and National Commerce Act.

Subchapter I. Provisions Relating to Effect of Death.

§ 19-601.02. Liability of nonprobate transferees for creditor claims and statutory allowances.

(a) For the purposes of this section, the term “nonprobate transfer” means a valid transfer effective at death, other than a transfer of a survivorship interest in a joint tenancy of real estate, by a transferor whose last domicile was in the District to the extent that the transferor immediately before death had power, acting alone, to prevent the transfer by revocation or withdrawal and instead to use the property for the benefit of the transferor or apply it to discharge claims against the transferor's probate estate.

(b) Except as otherwise provided by statute, a transferee of a nonprobate transfer is subject to liability to any probate estate of the decedent for allowed claims against decedent's probate for estate and statutory allowances to the decedent's spouse and children to the extent the estate is insufficient to satisfy those claims and allowances. The liability of a nonprobate transferee may not exceed the value of nonprobate transfers received or controlled by that transferee.

(c) Nonprobate transferees are liable for the insufficiency described in subsection (b) of this section in the following order of priority:

(1) A transferee designated in the decedent's will or any other governing instrument, as provided in the instrument;

(2) The trustee of a trust serving as the principal nonprobate instrument in the decedent's estate plan as shown by its designation as devisee of the decedent's residuary estate or by other facts or circumstances, to the extent of the value of the nonprobate transfer received or controlled; and

(3) Other nonprobate transferees, in proportion to the values received.

(d) Unless otherwise provided by the trust instrument, interests of beneficiaries in all trusts incurring liabilities under this section abate as necessary to satisfy the liability, as if all of the trust instruments were a single will and the interests were devised under it.

(e) A provision made in one instrument may direct the apportionment of the liability among the nonprobate transferees taking under that or any other governing instrument. If a provision in one instrument conflicts with a provision in another, the later one prevails.

(f) Upon due notice to a nonprobate transferee, the liability imposed by this section is enforceable in proceedings in the District, whether or not the transferee is located in the District.

(g) A proceeding under this section may not be commenced unless the personal representative of the decedent's estate has received a written demand for the proceeding from the surviving spouse or a child, to the extent that statutory allowances are affected, or a creditor. If the personal representative declines or fails to commence a proceeding after the demand, a person making the demand may commence the proceeding in the name of the decedent's estate, at the expense of the person making the demand and not of the estate. A personal representative who declines in good faith to commence a requested proceeding incurs no personal liability for declining.

(h) A proceeding under this section must be commenced within one year after the decedent's death, but a proceeding on behalf of a creditor whose claim was allowed after proceedings challenging disallowance of the claim may be commenced within 60 days after final allowance of the claim.

(i) Unless a written notice asserting that a decedent's probate estate is nonexistent or insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative, the following rules apply:

(1) Payment or delivery of assets by a financial institution, registrar, or other obligor, to a nonprobate transferee in accordance with the terms of the governing instrument controlling the transfer releases the obligor from all claims for amounts paid or assets delivered.

(2) A trustee receiving or controlling a nonprobate transfer is released from liability under this section with respect to any assets distributed to the trust's beneficiaries. Each beneficiary, to the extent of the distribution received, becomes liable for the amount of the trustee's liability attributable to assets received by the beneficiary.

(Mar. 19, 2013, D.C. Law 19-230, § 3(c)(2), 59 DCR 13606.)

Section references. — This section is referenced in § 19-604.15.

Legislative history of Law 19-230. — Law 19-230, the “Uniform Real Property Transfer on Death Act of 2012,” was introduced in Council and assigned Bill No. 19-753. The Bill was

adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Nov. 20, 2012, it was assigned Act No. 19-547 and transmitted to Congress for its review. D.C. Law 19-230 became effective on Mar. 19, 2013.

Subchapter IV. Uniform Real Property Transfers On Death.

§ 19-604.01. Short title.

This subchapter may be cited as the “Uniform Real Property Transfer on Death Act”.

(Mar. 19, 2013, D.C. Law 19-230, § 2(b), 59 DCR 13606.)

Legislative history of Law 19-230. — Law 19-230, the “Uniform Real Property Transfer on Death Act of 2012,” was introduced in Council and assigned Bill No. 19-753. The Bill was adopted on first and second readings on Oct. 16,

2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Nov. 20, 2012, it was assigned Act No. 19-547 and transmitted to Congress for its review. D.C. Law 19-230 became effective on Mar. 19, 2013.

§ 19-604.02. Definitions.

For the purposes of this subchapter, the term:

(1) “Beneficiary” means a person that receives property under a transfer on death deed.

(2) “Designated beneficiary” means a person designated to receive property in a transfer on death deed.

(3) “Joint owner” means an individual who owns property concurrently with one or more other individuals with a right of survivorship. The term “joint owner” includes a joint tenant and tenancy by the entirety. The term “joint owner” does not include a tenancy in common.

(4) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal entity.

(5) “Property” means an interest in real property located in the District of Columbia, which is transferable on the death of the owner.

(6) “Transfer on death deed” means a deed authorized under this subchapter.

(7) “Transferor” means an individual who makes a transfer on death deed.

(Mar. 19, 2013, D.C. Law 19-230, § 2(b), 59 DCR 13606.)

Legislative history of Law 19-230. — See note to § 19-604.01.

§ 19-604.03. Applicability.

This subchapter applies to a transfer on death deed made before, on, or after the effective date of this subchapter by a transferor dying on or after the effective date of this subchapter.

§ 19-604.04

DESCENT, DISTRIBUTION, AND TRUSTS

(Mar. 19, 2013, D.C. Law 19-230, § 2(b), 59 DCR 13606.)

Legislative history of Law 19-230. — See note to § 19-604.01.

§ 19-604.04. Nonexclusivity.

This subchapter does not affect any method of transferring property otherwise permitted under the law of the District of Columbia.

(Mar. 19, 2013, D.C. Law 19-230, § 2(b), 59 DCR 13606.)

Legislative history of Law 19-230. — See note to § 19-604.01.

§ 19-604.05. Transfer on death deed authorized.

An individual may transfer property to one or more beneficiaries effective at the transferor's death by a transfer on death deed.

(Mar. 19, 2013, D.C. Law 19-230, § 2(b), 59 DCR 13606.)

Legislative history of Law 19-230. — See note to § 19-604.01.

§ 19-604.06. Transfer on death deed revocable.

A transfer on death deed is revocable under § 19-604.11 even if the deed or another instrument contains a contrary provision.

(Mar. 19, 2013, D.C. Law 19-230, § 2(b), 59 DCR 13606.)

Legislative history of Law 19-230. — See note to § 19-604.01.

§ 19-604.07. Transfer on death deed nontestamentary.

A transfer on death deed is nontestamentary.

(Mar. 19, 2013, D.C. Law 19-230, § 2(b), 59 DCR 13606.)

Legislative history of Law 19-230. — See note to § 19-604.01.

§ 19-604.08. Capacity of transferor.

The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a will.

(Mar. 19, 2013, D.C. Law 19-230, § 2(b), 59 DCR 13606.)

Legislative history of Law 19-230. — See note to § 19-604.01.

§ 19-604.09. Requirements.

(a) Except as provided in subsection (b) of this section, a transfer on death deed shall contain the essential elements and formalities of a properly recordable inter vivos deed.

(b) A transfer on death deed shall state that the transfer to the designated beneficiary is to occur at the transferor's death.

(c) A transfer on death deed shall be recorded before the transferor's death in the Office of Recorder of Deeds.

(Mar. 19, 2013, D.C. Law 19-230, § 2(b), 59 DCR 13606.)

Legislative history of Law 19-230. — See note to § 19-604.01.

§ 19-604.10. Notice, delivery, acceptance, consideration not required.

A transfer on death deed is effective without:

(1) Notice or delivery to or acceptance by the designated beneficiary during the transferor's life; or

(2) Consideration.

(Mar. 19, 2013, D.C. Law 19-230, § 2(b), 59 DCR 13606.)

Legislative history of Law 19-230. — See note to § 19-604.01.

§ 19-604.11. Revocation by instrument authorized; revocation by act not permitted.

(a) Subject to subsection (b) of this section, an instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:

(1) Is one of the following:

(A) A transfer on death deed that revokes the deed or part of the deed expressly or by inconsistency;

(B) An instrument of revocation that expressly revokes the deed or part of the deed; or

(C) An inter vivos deed that expressly revokes the transfer on death deed or part of the deed; and

(2) Is acknowledged by the transferor after the acknowledgment of the deed being revoked and recorded before the transferor's death in the public records in the Office of the Recorder of Deeds.

(b) If a transfer on death deed is made by more than one transferor:

(1) Revocation by a transferor does not affect the deed as to the interest of another transferor; and

(2) A deed of joint owners is revoked only if it is revoked by all of the living joint owners.

(c) After a transfer on death deed is recorded, it may not be revoked by a revocatory act on the deed.

(d) This section does not limit the effect of an inter vivos transfer of the property.

(Mar. 19, 2013, D.C. Law 19-230, § 2(b), 59 DCR 13606.)

Section references. — This section is referenced in § 19-604.06.

Legislative history of Law 19-230. — See note to § 19-604.01.

§ 19-604.12. Effect of transfer on death deed during transferor's life.

During a transferor's life, a transfer on death deed does not:

(1) Affect an interest or right of the transferor or any other owner, including the right to transfer or encumber the property;

(2) Affect an interest or right of a transferee, even if the transferee has actual or constructive notice of the deed;

(3) Affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice of the deed;

(4) Affect the transferor's or designated beneficiary's eligibility for any form of public assistance;

(5) Create a legal or equitable interest in favor of the designated beneficiary; or

(6) Subject the property to claims or process of a creditor of the designated beneficiary.

(Mar. 19, 2013, D.C. Law 19-230, § 2(b), 59 DCR 13606.)

Legislative history of Law 19-230. — See note to § 19-604.01.

§ 19-604.13. Effect of transfer on death deed at transferor's death.

(a) Except as otherwise provided in the transfer on death deed, in this section, or in § 16-910, § 18-308, § 19-320, § 19-502, or in Chapter 1 of Title 19, on the death of the transferor, the following rules apply to property that is the subject of a transfer on death deed and owned by the transferor at death:

(1) Subject to paragraph (2) of this section, the interest in the property is transferred to the designated beneficiary in accordance with the deed.

(2) The interest of a designated beneficiary is contingent on the designated beneficiary surviving the transferor. The interest lapses if a designated beneficiary fails to survive the transferor.

(3) Subject to paragraph (4) of this section, concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship.

(4) If the transferor has identified 2 or more designated beneficiaries to receive concurrent interests in the property, the share of one which lapses or fails for any reason is transferred to the other, or to the others in proportion to the interest of each in the remaining part of the property held concurrently.

(b) A beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at the transferor's death. For purposes of this subsection, the recording of the transfer on death deed is deemed to have occurred at the transferor's death.

(c) If a transferor is a joint owner and is survived by one or more other joint owners, the property that is the subject of a transfer on death deed belongs to the surviving joint owner or owners with right of survivorship.

(d) If a transferor is a joint owner and is the last surviving joint owner, the transfer- on death-deed is effective.

(e) A transfer on death deed transfers property without covenant or warranty of title even if the deed contains a contrary provision.

(Mar. 19, 2013, D.C. Law 19-230, § 2(b), 59 DCR 13606.)

Legislative history of Law 19-230. — See note to § 19-604.01.

§ 19-604.14. Disclaimer.

A beneficiary may disclaim all or part of the beneficiary's interest as provided by Chapter 15 of this title.

(Mar. 19, 2013, D.C. Law 19-230, § 2(b), 59 DCR 13606.)

Legislative history of Law 19-230. — See note to § 19-604.01.

§ 19-604.15. Liability for creditor claims and statutory allowances.

A beneficiary of a transfer on death deed is liable for an allowed claim against the transferor's probate estate and statutory allowances to a surviving spouse and children to the extent provided in § 19-601.02.

(Mar. 19, 2013, D.C. Law 19-230, § 2(b), 59 DCR 13606.)

Legislative history of Law 19-230. — See note to § 19-604.01.

§ 19-604.16. Optional form of transfer on death deed.

The following form may be used to create a transfer on death deed. The other sections of this subchapter govern the effect of this or any other instrument used to create a transfer on death deed:

(front of form)

REVOCABLE TRANSFER ON DEATH DEED

NOTICE TO OWNER

You should carefully read all information on the other side of this form. You May Want to Consult a Lawyer Before Using This Form.

Owner or Owners Making This Deed:

.....
 Printed name Mailing address

Legal description of the property:
.....

I designate the following beneficiary if the beneficiary survives me.

Printed name Mailing address, if available

If my primary beneficiary does not survive me, I designate the following alternate beneficiary if that beneficiary survives me.

..... Printed name Mailing address, if available

At my death, I transfer my interest in the described property to the beneficiaries as designated above.

Before my death, I have the right to revoke this deed.

SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

..... [(SEAL)].....
Signature Date

..... [(SEAL)].....
Signature Date

ACKNOWLEDGMENT

(insert acknowledgment for deed here)

(back of form)

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

What does the Transfer on Death (“TOD”) deed do? When you die, this deed transfers the described property, subject to any liens or mortgages (or other encumbrances) on the property at your death. Probate is not required. The TOD deed has no effect until you die. You can revoke it at any time. You are also free to transfer the property to someone else during your lifetime. If you do not own any interest in the property when you die, this deed will have no effect.

How do I make a TOD deed? Complete this form. Have it acknowledged before a notary public or other individual authorized by law to take acknowledgments. The form has no effect unless it is acknowledged and recorded before your death.

Is the "legal description" of the property necessary? Yes.

How do I find the “legal description” of the property? This information may be on the deed you received when you became an owner of the property. This information may also be available in the Office of the Recorder of Deeds. If you are not absolutely sure, consult a lawyer.

Can I change my mind before I record the TOD deed? Yes. If you have not yet recorded the deed and want to change your mind, simply tear up or otherwise destroy the deed.

How do I “record” the TOD deed? Take the completed and acknowledged form to the Office of the Recorder of Deeds. Follow the instructions given by the Recorder of Deeds to make the form part of the official property records.

Can I later revoke the TOD deed if I change my mind? Yes. You can revoke the TOD deed. No one, including the beneficiaries, can prevent you from revoking the deed.

How do I revoke the TOD deed after it is recorded? There are three ways to revoke a recorded TOD deed: (1) Complete and acknowledge a revocation form, and record it in the Office of the Recorder of Deeds; (2) Complete and acknowledge a new TOD deed that disposes of the same property, and record it in the Office of the Recorder of Deeds; or (3) Transfer the property to someone else during your lifetime by a recorded deed that expressly revokes the TOD deed. You may not revoke the TOD deed by will.

I am being pressured to complete this form. What should I do? Do not complete this form under pressure. Seek help from a trusted family member, friend, or lawyer.

Do I need to tell the beneficiaries about the TOD deed? No, but it is recommended. Secrecy can cause later complications and might make it easier for others to commit fraud.

I have other questions about this form. What should I do? This form is designed to fit some but not all situations. If you have other questions, you are encouraged to consult a lawyer.

(Mar. 19, 2013, D.C. Law 19-230, § 2(b), 59 DCR 13606.)

Legislative history of Law 19-230. — See note to § 19-604.01.

§ 19-604.17. Optional form of revocation.

The following form may be used to create an instrument of revocation under this subchapter. The other sections of this subchapter govern the effect of this or any other instrument used to revoke a transfer on death deed.

(front of form)

REVOCATION OF TRANSFER ON DEATH DEED

NOTICE TO OWNER

This revocation must be recorded before you die or it will not be effective. This revocation is effective only as to the interests in the property of owners who sign this revocation.

IDENTIFYING INFORMATION

Owner or Owners of Property Making This Revocation:

.....
Printed name Mailing address

Legal description of the property:

I revoke all my previous transfers of this property by transfer on death deed.
SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

Signature _____ Date _____

Signature _____ Date _____

(insert acknowledgment here)

(back of form)

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

How do I use this form to revoke a Transfer on Death (“TOD”) deed? Complete this form. Have it acknowledged before a notary public or other individual authorized to take acknowledgments. Record the form in the public records in the Office of the Recorder of Deeds. The form must be acknowledged and recorded before your death or it has no effect.

How do I find the “legal description” of the property? This information may be on the TOD deed. It may also be available in the Office of the Recorder of Deeds. If you are not absolutely sure, consult a lawyer.

How do I “record” the form? Take the completed and acknowledged form to the Office of the Recorder of Deeds. Follow the instructions given by the Recorder of Deeds to make the form part of the official property records.

I am being pressured to complete this form. What should I do? Do not complete this form under pressure. Seek help from a trusted family member, friend, or lawyer.

I have other questions about this form. What should I do? This form is designed to fit some but not all situations. If you have other questions, consult a lawyer.

(Mar. 19, 2013, D.C. Law 19-230, § 2(b), 59 DCR 13606.)

Legislative history of Law 19-230. — See note to § 19-604.01.

§ 19-604.18. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

(Mar. 19, 2013, D.C. Law 19-230, § 2(b), 59 DCR 13606.)

Legislative history of Law 19-230. — See note to § 19-604.01.

§ 19-604.19. Relation to Electronic Signatures in Global and National Commerce Act.

This subchapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, approved June 30, 2000 (114 Stat. 464; 15 U.S.C. § 7001 et seq.) (“Electronic Signatures Act”), but does not modify, limit, or supersede section 101(c) of the Electronic Signatures Act, or authorize electronic delivery of any of the notices described in section 103(b) of the Electronic Signatures Act.

(Mar. 19, 2013, D.C. Law 19-230, § 2(b), 59 DCR 13606.)

Legislative history of Law 19-230. — See note to § 19-604.01.

CHAPTER 13. UNIFORM TRUST CODE.

Subchapter IV. Creation, Validity, Modification, and Termination of Trust.

§ 19-1304.02. Requirements for creation.

CASE NOTES

Intent of settlor.

Plaintiffs alleged sufficient facts to allow a reasonable inference that certain individual intended to create an oral charitable trust, as required for such trust to exist and permit a claim for breach of trust against directors of nonprofit corporation that had a bank account into which alleged trust funds were placed; according to plaintiffs’ allegations, individual directed colleague to hold funds in the bank account in trust for the benefit of international church, individual and colleague had worked

together for years and relocated to the United States to further their religious goals, colleague opened the bank account in international church’s name and not in his name or individual’s name, individual did not give the initial funds for deposit in the bank account for colleague’s personal use, and those funds and all money deposited thereafter were used for the next decades exclusively to benefit international church. The Federation for World Peace and Unification International, et al. v. Moon, et al., 140 WLR 1605 (Super. Ct. 2012).

CHAPTER 15. UNIFORM DISCLAIMER OF PROPERTY INTERESTS.

Sec.
19-1512. Delivery or filing.

Sec.
19-1515. Recording of disclaimer.

§ 19-1512. Delivery or filing.

(a) For the purposes of this section, the term “beneficiary designation” means an instrument, other than an instrument creating a trust, naming the beneficiary of:

- (1) An annuity or insurance policy;
- (2) An account with a designation for payment on death;
- (3) A security registered in beneficiary form;

(4) A pension, profit-sharing, retirement, or other employment-related benefit plan; or

(5) Any other nonprobate transfer at death.

(b) Subject to subsections (c) through (l) of this section, delivery of a disclaimer may be effected by personal delivery, first-class mail, or any other method likely to result in its receipt.

(c) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

(1) A disclaimer must be delivered to the personal representative of the decedent's estate; or

(2) If no personal representative is then serving, it must be filed with a court having jurisdiction to appoint the personal representative.

(d) In the case of an interest in a testamentary trust:

(1) A disclaimer must be delivered to the trustee then serving, or if no trustee is then serving, to the personal representative of the decedent's estate; or

(2) If no personal representative is then serving, it must be filed with a court having jurisdiction to enforce the trust.

(e) In the case of an interest in an inter vivos trust:

(1) A disclaimer must be delivered to the trustee then serving;

(2) If no trustee is then serving, it must be filed with a court having jurisdiction to enforce the trust; or

(3) If the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it must be delivered to the settlor of a revocable trust or the transferor of the interest.

(f) In the case of an interest created by a beneficiary designation which is disclaimed before the designation becomes irrevocable, the disclaimer must be delivered to the person making the beneficiary designation.

(g) In the case of an interest created by a beneficiary designation which is disclaimed after the designation becomes irrevocable:

(1) The disclaimer of an interest in personal property must be delivered to the person obligated to distribute the interest; and

(2) The disclaimer of an interest in real property must be recorded with the Recorder of Deeds.

(h) In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

(i) In the case of a disclaimer by an object or taker in default of exercise of a power of appointment at any time after the power was created:

(1) The disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or

(2) If no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

(j) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

(1) The disclaimer must be delivered to the holder, the personal representative of the holder's estate, or to the fiduciary under the instrument that created the power, or

(2) If no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

(k) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection (c), (d), or (e) of this section, as if the power disclaimed were an interest in property.

(l) In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

(Mar. 2, 2007, D.C. Law 16-205, § 2(b), 53 DCR 9063; Mar. 19, 2013, D.C. Law 19-230, § 3(a), 59 DCR 13606.)

Section references. — This section is referenced in § 19-1505 and § 19-1515.

Effect of amendments. — The 2013 amendment by D.C. Law 19-230, in (f), substituted “which is disclaimed before” for “made before the time” and substituted “the disclaimer” for “a disclaimer”; and rewrote (g).

Legislative history of Law 19-230. — Law 19-230, the “Uniform Real Property Transfer on

Death Act of 2012,” was introduced in Council and assigned Bill No. 19-753. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Nov. 20, 2012, it was assigned Act No. 19-547 and transmitted to Congress for its review. D.C. Law 19-230 became effective on Mar. 19, 2013.

§ 19-1515. Recording of disclaimer.

If an instrument transferring an interest in or power over property subject to a disclaimer is required or permitted by law to be filed, recorded, or registered, the disclaimer may be so filed, recorded, or registered. Except as provided in [§] 19-1512(g)(2), failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

(Mar. 2, 2007, D.C. Law 16-205, § 2(b), 53 DCR 9063; Mar. 19, 2013, D.C. Law 19-230, § 3(b), 59 DCR 13606.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-230 added “Except as provided in section 19-1512(g)(2)” at the beginning of the second sentence; and made related changes.

Legislative history of Law 19-230. — See note to § 19-1512.

TITLE 20. PROBATE AND ADMINISTRATION OF DECEDENTS' ESTATES.

CHAPTER 3. OPENING THE ESTATE.

Subchapter II. Abbreviated Probate Proceeding.

§ 20-312. Action on petition.

Section references. — This section is referenced in § 20-321.

CASE NOTES

Attestation.

Testator's purported will lacked proper attestation and, therefore, was void; statute required that two or more witnesses attest and subscribe to will in testator's presence, will only bore testator's signature and raised seal of notary public, and affidavits from non-attesting

witnesses, who could not verify that they witnessed two attesting witnesses sign will in presence of testator, failed to satisfy statutory requirements for due execution of will. In re Estate of Henneghan, 45 A.3d 684, 2012 D.C. App. LEXIS 299 (2012).

TITLE 21. FIDUCIARY RELATIONS AND PERSONS WITH MENTAL ILLNESS.

Chapter

- 5. Hospitalization of Persons with Mental Illness.
- 9. Persons with Mental Illness Found in Certain Federal Reservations.
- 11. Commitment and Maintenance of Persons with Moderate Intellectual Disabilities.
- 12. Use of Trained Employees to Administer Medication to Persons with Intellectual Disabilities or other Disabilities.
- 20. Guardianship, Protective Proceedings, and Durable Power of Attorney.
- 22. Health-Care Decisions.

CHAPTER 1. GUARDIANSHIP OF INFANTS.

Subchapter I. Appointment of Guardian; Bond.

§ 21-101. Natural guardians of the person.

Section references. — This section is referenced in § 21-106.

Editor's notes.

Section 21(a) of D.C. Law 19-169 substituted "Persons with Mental Illness" for "the Mentally Ill" in the Title heading.

Section 35 of D.C. Law 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

CHAPTER 5. HOSPITALIZATION OF PERSONS WITH MENTAL ILLNESS.

Subchapter I. Definitions; Commission on Mental Health

Sec.
21-501. Definitions.

Subchapter I. Definitions; Commission on Mental Health.

§ 21-501. Definitions.

As used in the chapter:

(1) "Administrator" means a person in charge of a public or private hospital or his delegate;

(1A) "Chief clinical officer" means the psychiatrist or qualified psychologist for the Department who is responsible for coordinating the treatment of persons receiving mental health supports or mental health services from the Department;

(2) "Chief of service" means the physician or qualified psychologist charged with overall responsibility for the professional program of care and treatment in the particular administrative unit of the hospital to which the

patient has been admitted or such other member of the medical staff as the chief of service designates;

(3) "Commission" means the Commission on Mental Health;

(3A) "Core services agency" means a community-based provider of mental health services and mental health supports that is certified by the Department and that acts as a clinical home for consumers of mental health services by providing a single point of access and accountability for diagnostic assessment, medication-somatic treatment, counseling and psychotherapy, community support services, and access to other needed services;

(4) "Court" means the Superior Court of the District of Columbia;

(4A) "Department" means the Department of Mental Health;

(4A-i) "Domestic partner" shall have the same meaning as provided in § 32-701(3).

(4B) "Mental health services" means the services funded or regulated by the Department for the purpose of addressing mental illness or mental health problems;

(4C) "Mental health supports" means the supports funded or regulated by the Department for the purpose of addressing mental illness or mental health problems;

(5) "Mental illness" means a psychosis or other disease which substantially impairs the mental health of a person;

(6) Repealed.

(7) "Physician" means a person licensed under the laws of the District of Columbia to practice medicine, or a person who practices medicine in the employment of the Government of the United States or of the District of Columbia;

(8) "Private hospital" means a nongovernmental hospital or institution, or part thereof, in the District of Columbia, equipped and qualified to provide inpatient care and treatment for a person with a physical or mental illness;

(8A) "Provider" means an individual or entity that:

(A) Is duly licensed or certified by the Department to provide mental health services or mental health supports; or

(B) Has entered into an agreement with the Department to provide mental health services or mental health supports;

(8B) "Psychiatrist" means a physician who is licensed to practice medicine in the District of Columbia, or is employed by the federal government, and has completed a residency in psychiatry;

(9) "Public hospital" means a hospital or institution, or part thereof, in the District of Columbia, owned and operated by the Government of the United States or of the District of Columbia, equipped and qualified to provide inpatient care and treatment for persons with from physical or mental illness;

(9A) "Qualified physician" means a person licensed under the laws of the District of Columbia to practice medicine who is board-certified in emergency medicine and certified by the Department to examine persons and prepare admission certificates pursuant to section 21-522; and

(10) "Qualified psychologist" means a person who is licensed pursuant to section 501 of the District of Columbia Health Occupations Revision Act of

1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1205.01), and has (1) one year of formal training within a hospital setting; or (2) two years of supervised clinical experience in an organized health care setting, one of which must be post-doctoral.

(Sept. 14, 1965, 79 Stat. 751, Pub. L. 89-183, § 1, July 29, 1970, 84 Stat. 567, Pub. L. 91-358, title I, § 150(c)(1); Feb. 24, 1984, D.C. Law 5-48, § 11(a)(4), (b), 30 DCR 5778; Apr. 30, 1988, D.C. Law 7-104, § 6(c), 35 DCR 147; Apr. 9, 1997, D.C. Law 11-255, § 20(b), 44 DCR 1271; Apr. 4, 2003, D.C. Law 14-283, § 2(b), 50 DCR 917; Apr. 24, 2007, D.C. Law 16-305, § 35(a)(1), 53 DCR 6198; Sept. 12, 2008, D.C. Law 17-231, § 22(a), 55 DCR 6758; Sept. 26, 2012, D.C. Law 19-169, § 21(c)(2), 59 DCR 5567.)

Section references. — This section is referenced in § 4-1345.01, § 20-303, § 21-502, § 21-901, and § 21-2203.

Effect of amendments.

The 2012 amendment by D.C. Law 19-169 substituted “with” for “suffering from” in (9).

Legislative history of Law 19-169. — Law 19-169, the “People First Respectful Language Modernization Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-189. The Bill was adopted on first and second readings on Mar. 6, 2012, and Apr. 17,

2012, respectively. Signed by the Mayor on May 15, 2012, it was assigned Act No. 19-361 and transmitted to Congress for its review. D.C. Law 19-169 became effective on Sept. 26, 2012.

Editor’s notes. — Section 21(c)(1) of D.C. Law 19-169 substituted “Persons with Mental Illness” for “the Mentally Ill” in the chapter heading.

Section 35 of D.C. Law 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

§ 21-503. Examinations and hearings; subpoenas; witnesses; place.

CASE NOTES

Expert witnesses.

Trial court’s procedural ruling that only a psychiatrist or psychologist could testify on the issue of dangerousness in proceedings seeking involuntary hospitalization, such that social worker proffered as an expert by government

was categorically not qualified, was a fundamental procedural question the government could appeal; trial court’s categorical ruling essentially dismissed the case for want of prosecution. In re Wyler, 46 A.3d 396, 2012 D.C. App. LEXIS 306 (2012).

Subchapter II. Voluntary and Nonprotesting Hospitalization.

§ 21-511. Voluntary hospitalization and treatment.

Section references. — This section is referenced in § 21-512.

LAW REVIEWS AND JOURNAL COMMENTARIES

Civil Commitment, 21 Mental & Physical Disability Law Reporter 163.

CHAPTER 9. PERSONS WITH MENTAL ILLNESS FOUND IN CERTAIN FEDERAL RESERVATIONS.

Sec.	Sec.
21-901. Definition.	21-906. Examinations; adjudications; laws applicable; expense of care and treatment.
21-902. Commitments by special commissioners of certain district courts.	21-908. Care in a Veterans' Administration facility.
21-903. Apprehension by certain officials of persons believed to have a mental illness; proceedings.	
21-904. Admission upon written application; right of release.	

§ 21-901. Definition.

As used in this chapter, “mental illness” has the same meaning as that given to the term by section 21-501.

(Sept. 14, 1965, 79 Stat. 763, Pub. L. 89-183, § 1; Sept. 26, 2012, D.C. Law 19-169, § 21(d)(2), 59 DCR 5567.)

Effect of amendments. — The 2012 amendment by D.C. Law 19-169 substituted “mental illness” for “mentally ill person.”

Legislative history of Law 19-169. — Law 19-169, the “People First Respectful Language Modernization Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-189. The Bill was adopted on first and second readings on Mar. 6, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May

15, 2012, it was assigned Act No. 19-361 and transmitted to Congress for its review. D.C. Law 19-169 became effective on Sept. 26, 2012.

Editor’s notes. — The 2012 amendment by Section 21(d)(1) of D.C. Law 19-169 substituted “Persons with Mental Illness” for “Mentally Ill Persons” in the chapter heading.

Section 35 of D.C. Law 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

§ 21-902. Commitments by special commissioners of certain district courts.

(a) A United States commissioner specially designated by the United States District Court for the Eastern District of Virginia or by the United States District Court for the District of Maryland may commit to Saint Elizabeths Hospital, for observation and diagnosis, a person found in a place over which the United States has exclusive or concurrent jurisdiction in Arlington County, Fairfax County, Loudoun County or the city of Alexandria, in the State of Virginia, or in Montgomery County or Prince Georges County in the State of Maryland, who is alleged, and is believed by the commissioner, to be a person with a mental illness. A United States commissioner specially designated by the United States District Court for the District of Columbia has like jurisdiction and authority in the case of any person temporarily detained in Saint Elizabeths Hospital, pursuant to section 21-903.

(b) A commitment provided for by subsection (a) of this section shall be for not more than 30 days and may be made only after a hearing before the commissioner upon:

- (1) the testimony under oath of at least two witnesses as to their belief that the person is a person with a mental illness; and
- (2) the testimony under oath or affidavit of two physicians, at least one of

whom is skilled in the treatment and diagnosis of nervous and mental disorders, that they have examined the alleged person with a mental illness and believe him to be a person with a mental illness and not fit to remain at liberty and go unrestrained, and that he should be in custody in a hospital for the treatment of mental or nervous disorders for his own safety and welfare and for the preservation of the peace and good order.

(c) The head of the agency of the United States in control of the place where a person is apprehended for a hearing pursuant to this section shall forthwith notify the spouse or a near relative or friend of the person so apprehended whose address is known to him or can by reasonable inquiry be ascertained by him. In the case of a person described by section 21-907, the agency head shall notify the head of the department having jurisdiction over the service to which the person belongs.

(d) The agency of the United States in control of the place where a person is apprehended for a hearing pursuant to this section may employ physicians for the purpose and pay compensation for their services and pay expenses of witnesses in the proceedings out of funds available therefor. Physicians who are officers or employees of the United States or who are members of the armed forces of the United States may render the services without additional compensation.

(Sept. 14, 1965, 79 Stat. 763, Pub. L. 89-183, § 1; Sept. 26, 2012, D.C. Law 19-169, § 21(d)(3), 59 DCR 5567.)

Section references. — This section is referenced in § 21-903, § 21-904, § 21-905, and § 21-906.

Effect of amendments. — The 2012 amendment by D.C. Law 19-169 substituted “person with mental illness” for “mentally ill person” wherever it appears in (a) and (b).

Legislative history of Law 19-169. — See note to § 21-901.

Editor’s notes. — Section 35 of D.C. Law 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

§ 21-903. Apprehension by certain officials of persons believed to have a mental illness; proceedings.

(a) An officer or employee of the United States authorized to make arrests, and a guard or watchman employed by the United States, may apprehend and detain a person whom he believes to be a person with mental illness and found in a place specified by section 21-902, and, except as provided by section 21-904, bring the person for a hearing before a United States commissioner for the district where the person was apprehended, and designated as provided by section 21-902. When an immediate hearing before a commissioner cannot be had, the officer or employee may take the person to Saint Elizabeths Hospital. The Superintendent of Saint Elizabeths Hospital may detain the person pending a hearing before a United States commissioner for the District of Columbia, designated as provided by section 21-902, for a period not exceeding 72 hours.

(b) The United States commissioner specified by subsection (a) of this section shall hold a hearing as promptly as practicable after the apprehension of a person pursuant to that subsection and in any event not later than 72

hours thereafter. The hearing shall be conducted at Saint Elizabeths Hospital if the Superintendent of the hospital certifies that in his opinion it would be prejudicial to the health of the person or unsafe to produce him at a hearing elsewhere. If, after a hearing at a place other than Saint Elizabeths Hospital, the commissioner commits a person to Saint Elizabeths Hospital, an officer, employee, guard, or watchman specified by subsection (a) of this section may transport the person to Saint Elizabeths Hospital in accordance with the order of the commissioner.

(Sept. 14, 1965, 79 Stat. 764, Pub. L. 89-183, § 1; Sept. 26, 2012, D.C. Law 19-169, § 21(d)(4), 59 DCR 5567.)

Section references. — This section is referenced in § 21-902, § 21-905, and § 21-906.

Effect of amendments. — The 2012 amendment by D.C. Law 19-169 substituted “have a mental illness” for “be mentally ill” in the section heading; and substituted “person with mental illness” for “mentally ill person” in the first sentence of (a).

Legislative history of Law 19-169. — See note to § 21-901.

Editor’s notes. — Section 35 of D.C. Law 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

§ 21-904. Admission upon written application; right of release.

A person in a place specified by section 21-902 may, upon his written application, be admitted for observation and diagnosis to Saint Elizabeths Hospital in the discretion of the Superintendent of the hospital for a period not exceeding 30 days. If, after admission to Saint Elizabeths Hospital, he expresses a desire for release from the hospital, he shall be released within 72 hours thereafter, unless proceedings for his adjudication as a person with a mental illness have been instituted as provided for by section 21-906.

(Sept. 14, 1965, 79 Stat. 764, Pub. L. 89-183, § 1; Sept. 26, 2012, D.C. Law 19-169, § 21(d)(5), 59 DCR 5567.)

Section references. — This section is referenced in § 21-903, § 21-906, and § 21-909.

Effect of amendments. — The 2012 amendment by D.C. Law 19-169 substituted “person with mental illness” for “mentally ill person” in the second sentence

The 2012 amendment by D.C. Law 19-169 substituted “person with mental illness” for “mentally ill person” in the second sentence

Legislative history of Law 19-169. — See note to § 21-901.

Legislative history of Law 19-169. — See note to § 21-901.

Editor’s notes. — Section 35 of D.C. Law 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

Section 35 of D.C. Law 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

§ 21-906. Examinations; adjudications; laws applicable; expense of care and treatment.

(a) The Superintendent of Saint Elizabeths Hospital shall promptly examine a person committed as provided by sections 21-902 and 21-903, and, if not found to have a mental illness, shall forthwith discharge him, or, if found to

have a mental illness, shall return him to the State of his residence or to his relatives, if practicable.

(b) Proceedings for the adjudication of a person referred to by subsection (a) of this section, or of a person admitted to the hospital pursuant to section 21-904, as a person with a mental illness, and for the appointment of a committee of his person or property, may be instituted in the Superior Court of the District of Columbia by the Secretary of Health and Human Services or by a party interest. The laws of the District of Columbia apply to the proceedings. This chapter does not impose upon the District of Columbia the expense of care and treatment of a person apprehended, detained, or committed under this chapter, unless the person is a resident of the District of Columbia as defined by subsection (b) of section 21-551.

(Sept. 14, 1965, 79 Stat. 765, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 568, Pub. L. 91-358, title I, § 150(f); Apr. 30, 1988, D.C. Law 7-104, § 6(i), 35 DCR 147; Sept. 26, 2012, D.C. Law 19-169, § 21(d)(6), 59 DCR 5567.)

Section references. — This section is referenced in § 21-904.

Effect of amendments. — The 2012 amendment by D.C. Law 19-169 substituted “found to have a mental illness” for “found to be mentally ill” in (a); and substituted “person with mental illness” for “mentally ill person” in the first sentence of (b).

Legislative history of Law 19-169. — See note to § 21-901.

Editor’s notes. — Section 35 of D.C. Law 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

§ 21-908. Care in a Veterans’ Administration facility.

(a) If a person adjudicated to be a person with mental illness under this chapter is entitled to care and treatment in a Veterans’ Administration facility, the United States District Court for the District of Columbia may commit him to the custody of the Administrator of Veterans’ Affairs for placement in an available facility, or the Superintendent of Saint Elizabeths Hospital may transfer him to such a facility.

(b) This chapter does not limit, restrict, or deprive the courts of a State or the District of Columbia of jurisdiction to commit to the Veterans’ Administration a person with mental illness entitled to care and treatment by the Veterans’ Administration in accordance with the laws of the State or the District of Columbia.

(Sept. 14, 1965, 79 Stat. 765, Pub. L. 89-183, § 1; Sept. 26, 2012, D.C. Law 19-169, § 21(d)(7), 59 DCR 5567.)

Effect of amendments. — The 2012 amendment by D.C. Law 19-169 substituted “person with mental illness” for “mentally ill person” in (a) and (b).

Legislative history of Law 19-169. — See note to § 21-901.

Editor’s notes. — Section 35 of D.C. Law 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

CHAPTER 11. COMMITMENT AND MAINTENANCE OF PERSONS WITH MODERATE INTELLECTUAL DISABILITIES.

Sec.	Sec.
21-1101. Forest Haven defined. [Repealed].	Family Division appears to have at least a moderate intellectual disability.
21-1109. Private and public patients; bond for support and maintenance; sufficiency and justification of sureties. [Repealed].	21-1115. Inquiry under this chapter if person convicted of offense.
21-1112. Public patients may become private patients by filing bond and paying advance. [Repealed].	21-1119. Removal from school of nonresidents of the District of Columbia. [Repealed].
21-1114. Proceeding when child brought before	

§ 21-1101. Forest Haven defined. [Repealed].

Repealed.

(Sept. 14, 1965, 79 Stat. 766, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 568, Pub. L. 91-358, title I, § 150(g)(1)(A); Oct. 22, 1970, 84 Stat. 1088, Pub. L. 91-490, § 2(a)(4); Mar. 3, 1979, D.C. Law 2-137, § 604(a)(5), 25 DCR 5094; Sept. 26, 2012, D.C. Law 19-169, § 21(e)(3), 59 DCR 5567.)

Legislative history of Law 19-169. — Law 19-169, the “People First Respectful Language Modernization Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-189. The Bill was adopted on first and second readings on Mar. 6, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 15, 2012, it was assigned Act No. 19-361 and transmitted to Congress for its review. D.C. Law 19-169 became effective on Sept. 26, 2012.

Editor’s notes. — Section 21(e)(1) of D.C. Law 19-169 substituted “Persons with Moderate Intellectual Disabilities” for “Substantially Retarded Persons” in the chapter heading.

Section 35 of D.C. Law 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

§ 21-1109. Private and public patients; bond for support and maintenance; sufficiency and justification of sureties. [Repealed].

Repealed.

(Sept. 14, 1965, 79 Stat. 768, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 568, Pub. L. 91-358, title I, § 159(g)(5); Oct. 22, 1970, 84 Stat. 1087, Pub. L. 91-490, § 2(a)(2); Sept. 26, 2012, D.C. Law 19-169, § 21(e)(4), 59 DCR 5567.)

Legislative history of Law 19-169. — See note to § 21-1101.

19-169 provided that no provision of the act shall impair any right or obligation existing under law.

Editor’s notes. — Section 35 of D.C. Law

§ 21-1110. Liability of estate of public patient for maintenance. [Repealed].

Repealed.

(Sept. 14, 1965, 79 Stat. 769, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 568, Pub. L. 91-358, title I, § 150(g)(1)(A); Oct. 22, 1970, 84 Stat. 1087, Pub. L.

91-490, § 2(a)(1), (2), (5); Sept. 26, 2012, D.C. Law 19-169, § 21(e)(5), 59 DCR 5567.)

Legislative history of Law 19-169. — See note to § 21-1101. 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

Editor's notes. — Section 35 of D.C. Law

§ 21-1111. Proceedings to charge relatives legally responsible for maintenance of public patient; collection of maintenance payments; enforcement of order; liability of decedent's estate. [Repealed].

Repealed.

(Sept. 14, 1965, 79 Stat. 769, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 568, Pub. L. 91-358, title I, § 150(g)(1)(A), (6); Oct. 22, 1970, 84 Stat. 1087, Pub. L. 91-490, § 2(a)(1), (2), (6); Mar. 24, 1998, D.C. Law 12-81, § 14(m), 45 DCR 745; Sept. 26, 2012, D.C. Law 19-169, § 21(e)(6), 59 DCR 5567.)

Legislative history of Law 19-169. — See note to § 21-1101. 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

Editor's notes. — Section 35 of D.C. Law

§ 21-1112. Public patients may become private patients by filing bond and paying advance. [Repealed].

Repealed.

(Sept. 14, 1965, 79 Stat. 770, Pub. L. 89-183, § 1; Oct. 22, 1970, 84 Stat. 1087, Pub. L. 91-490, § 2(a)(2); Sept. 26, 2012, D.C. Law 19-169, § 21(e)(7), 59 DCR 5567.)

Legislative history of Law 19-169. — See note to § 21-1101. shall impair any right or obligation existing under law.

Legislative history of Law 19-169. — See note to § 21-1101. Section 35 of D.C. Law 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

Editor's notes. — Section 35 of D.C. Law 19-169 provided that no provision of the act

§ 21-1114. Proceeding when child brought before Family Division appears to have at least a moderate intellectual disability.

When a child is brought before the Family Division of the Superior Court upon allegations that he is delinquent, neglected, or in need of supervision, and it appears to the court, on the testimony of a physician or psychologist or other evidence, that the child has at least a moderate intellectual ability as defined in the Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act of 1978 (D.C. Official Code, § 7-1301.01 et seq.), the court may adjourn the proceedings, other than proceedings on a motion to transfer pursuant to section 16-2307, and direct the child's parent or a guardian appointed by the

court to file a petition under that act. The court may order that, pending the preparation, filing, and hearing of the petition, the child be detained in a place of safety, or be placed under the guardianship of a suitable person, if that person enters into a recognizance for his appearance.

(Sept. 14, 1965, 79 Stat. 771, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 568, Pub. L. 91-358, title I, § 150(g)(7); Oct. 22, 1970, 84 Stat. 1087, Pub. L. 91-490, § 2(a)(1), (12); Mar. 3, 1979, D.C. Law 2-137, § 604(a)(2), 25 DCR 5094; Mar. 24, 1998, D.C. Law 12-81, § 14(n), 45 DCR 745; Apr. 24, 2007, D.C. Law 16-305, § 35(b)(2), 53 DCR 6198; Sept. 26, 2012, D.C. Law 19-169, § 21(e)(8), 59 DCR 5567.)

Effect of amendments.

The 2012 amendment by D.C. Law 19-169 substituted “intellectual disability” for “mental retardation” in the section heading; in the first sentence, substituted “child has at least a moderate intellectual disability” for “child is at least moderately mentally retarded” and “Citizens with Intellectual Disabilities” for “Mentally Retarded Citizens.”

Legislative history of Law 19-169. — See note to § 21-1101.

Editor’s notes. — Section 35 of D.C. Law 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

§ 21-1115. Inquiry under this chapter if person convicted of offense.

(a) On the conviction by a court of record of competent jurisdiction of a person of an offense, or of a violation of an ordinance which is in whole or in part a violation of a statute of the District of Columbia, the court when satisfied on the testimony of a physician or a psychologist or other psychologist or other evidence that the person has at least a moderate intellectual disability as defined in the Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act (D.C. Official Code § 7-1301.01 et seq.), may suspend sentence, or suspend the entering of an order sending the person to a jail, prison, or reformatory, or to a training or industrial school, and direct that a parent or guardian appointed by the court file a petition under that act.

(b) When the court directs a petition to be filed pursuant to subsection (a) of this section, it may order that, pending the preparation, filing and hearing of the petition, the person be detained in a place of safety, or be placed under the guardianship of a suitable person, if that person enters into a recognizance for his appearance.

(c) Where, upon the hearing of a petition filed pursuant to this section or pursuant to a subsequent hearing under this chapter, the person is found not to have at least a moderate intellectual disability, the court shall impose sentence.

(Sept. 14, 1965, 79 Stat. 771, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 568, Pub. L. 91-358, title I, § 150(g)(1)(A); Oct. 22, 1970, 84 Stat. 1087, Pub. L. 91-490, § 2(a)(1); Mar. 3, 1979, D.C. Law 2-137, § 604(a)(3), (4), 25 DCR 5094; Mar. 24, 1998, D.C. Law 12-81, § 14(o), 45 DCR 745; Sept. 26, 2012, D.C. Law 19-169, § 21(e)(9), 59 DCR 5567.)

Effect of amendments. — The 2012 amendment by D.C. Law 19-169, in (a), substituted “person has at least a moderate intellectual disability” for “person is at least moderately mentally retarded” and “Citizens with Intellectual Disabilities” for “Mentally Retarded Citizens”; and substituted “have at least a moderate intellectual disability” for “be at least moderately mentally retarded” in (c).

Legislative history of Law 19-169. — See note to § 21-1101.

Editor’s notes. — Section 35 of D.C. Law 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

§ 21-1119. Removal from school of nonresidents of the District of Columbia. [Repealed].

Repealed.

(Sept. 14, 1965, 79 Stat. 772, Pub. L. 89-183, § 1; Oct. 22, 1970, 84 Stat. 1087, Pub. L. 91-490, § 2(a)(2); Sept. 26, 2012, D.C. Law 19-169, § 21(e)(10), 59 DCR 5567.)

Legislative history of Law 19-169. — See note to § 21-1101.

19-169 provided that no provision of the act shall impair any right or obligation existing under law.

Editor’s notes. — Section 35 of D.C. Law

CHAPTER 12. USE OF TRAINED EMPLOYEES TO ADMINISTER MEDICATION TO PERSONS WITH INTELLECTUAL DISABILITIES OR OTHER DISABILITIES.

Sec.
21-1201. Definitions.

§ 21-1201. Definitions.

For the purposes of this chapter, the term:

(1) “Administer” means:

(A) The direct application of medication to the human body whether by ingestion, inhalation, insertion, or topical means; or

(B) An injection of epipen or equivalent ejection system for emergency purposes only.

(2) Repealed.

(3) “Developmental disability” means a severe chronic disability of a person 5 years of age or older which:

(A) Is attributable to a mental or physical impairment or a combination of mental and physical impairments;

(B) Is manifested before the person attains 22 years of age;

(C) Is likely to continue indefinitely;

(D) Results in substantial functional limitations in 3 or more of the following major life activities:

(i) Self care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction;

(vi) Capacity for independent living; and

(vii) Economic self-sufficiency; and

(E) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated; except that such term, when applied to infants and young children means individuals from birth to 5 years of age, inclusive, who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting developmental disability if services are not provided.

(4) "General supervision" means:

(A) A registered nurse shall be available for verbal or on-site consultation to the trained employee or licensed practical nurse.

(B) A registered nurse shall review and document the trained employee's ability to administer medication correctly to program participants every 3 months for the 1st year and every 6 months thereafter.

(4A) "Intellectual disability" means a substantial limitation in mental capacity that manifests before 18 years of age, characterized by significantly below-average intellectual functioning, existing concurrently with related limitations in 2 or more of the following applicable, adaptive skills:

(A) Communication;

(B) Self-care;

(C) Home living;

(D) Social;

(E) Community use;

(F) Self-direction;

(G) Health;

(H) Safety;

(I) Functional academics;

(J) Leisure; and

(K) Work.

(5) "Licensed practitioner" means a medical doctor, dentist, or advanced registered nurse.

(6) "Medication" means a controlled (excluding Classes I and II) or noncontrolled substance or treatment regarded as effective in bringing about recovery, restoration of health, alleviation of pain or symptoms of an illness, or the normal functioning of the body.

(7) Repealed.

(8) "Monitor" means:

(A) A registered nurse shall annually review the program participant's ability to self-administer medication correctly as prescribed.

(B) A registered nurse shall document in the program participant's records an assessment of the program participant's ability to continue self-administering the program participant's medication.

(C) A trained employee shall, at a minimum, review quarterly and document the program participant's ability to self-administer medication as prescribed.

(9) "Prescription" means an order for medication signed by a licensed practitioner or transmitted by the licensed practitioner to a pharmacist,

registered nurse, or licensed practical nurse by word of mouth, telephone, telegraph, or other means of communication, and recorded in writing by the pharmacist, registered nurse, or licensed practical nurse.

(10) "Program" means an agency licensed, certified, or approved by the District government as a child care facility, private school, day program, community based residence, or other agency providing residential services, education, habilitation, vocational, or employment training services to individuals with intellectual disabilities or other developmental disabilities.

(11) "Program participant" means an individual with an intellectual disability or other development disability who is enrolled in or attending a public or private program.

(12) "Self-administration of medication" means that the program participant has the ability to identify, pour, and administer medication without assistance.

(13) "Trained employee" means an individual employed to work in a program who has successfully completed a training program approved by the Mayor and is certified to administer medication to program participants, or an individual who has successfully completed a training program in medication administration approved by the State of Maryland or the Commonwealth of Virginia.

(Sept. 26, 1996, D.C. Law 11-52, § 601(b), 42 DCR 3684; Apr. 9, 1997, D.C. Law 11-255, § 20(c), 44 DCR 1271; Mar. 26, 1999, D.C. Law 12-175, § 1002(a), (b), 45 DCR 7193; Oct. 20, 1999, D.C. Law 13-38, § 1202(b), 46 DCR 6373; Sept. 26, 2012, D.C. Law 19-169, § 21(f)(2), 59 DCR 5567.)

Section references. — This section is referenced in § 4-1345.01.

Effect of amendments.

The 2012 amendment by D.C. Law 19-169 added (4A); repealed (7), which formerly read: "Mental retardation" means a substantial limitation in mental capacity that manifests before 18 years of age, characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in 2 or more of the following applicable, adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work"; substituted "intellectual disabilities or other developmental disabilities" for "mental retardation or other developmental disability" in (10); and substituted "an intellectual disability" for "mental retardation" in (11).

Legislative history of Law 19-169. — Law 19-169, the "People First Respectful Language Modernization Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-189. The Bill was adopted on first and second readings on Mar. 6, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 15, 2012, it was assigned Act No. 19-361 and transmitted to Congress for its review. D.C. Law 19-169 became effective on Sept. 26, 2012.

Editor's notes. — Section 21(f)(1) of D.C. Law 19-169 substituted "Intellectual Disabilities" for "Mental Retardation" in the chapter heading.

Section 35 of D.C. Law 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

CHAPTER 20. GUARDIANSHIP, PROTECTIVE PROCEEDINGS, AND DURABLE POWER OF ATTORNEY.

Subchapter I. General Provisions

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| Sec. | | guardian of an incapacitated individual. |
| 21-2002. | Supplementary general principles of law applicable. | <i>Subchapter VI. Protection of Property of Incapacitated, Disappeared or Detained Individuals</i> |
| | <i>Subchapter II. Definitions</i> | |
| 21-2011. | Definitions. | 21-2054. Procedure concerning hearing and order on original petition. |
| | <i>Subchapter V. Guardians of Incapacitated Individuals.</i> | 21-2060. Compensation and expenses. |
| 21-2041. | Procedure for court-appointment of a | |

Subchapter I. General Provisions.

§ 21-2002. Supplementary general principles of law applicable.

(a) Unless displaced by the particular provisions of this chapter, the principles of law and equity supplement its provisions.

(b) Nothing in this chapter shall operate to repeal, alter, or amend the rights of an individual who is the subject of a petition for civil commitment in any proceeding under Chapter 5 of Title 21, or the Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act of 1978, effective November 8, 1978 (D.C. Law 2-137; D.C. Official Code, § 7-1301.01 et seq.).

(c) Nothing in this chapter shall affect any guardian or conservator appointed by the court upon a petition filed prior to the effective date of this chapter.

(d) An individual shall be presumed competent and to have the capacity to make legal, health-care, and all other decisions for himself or herself, unless certified otherwise under section 21-2204 or deemed incapacitated or incompetent by a court. Incapacity shall not be inferred from the fact that an individual:

(1) Has been voluntarily or involuntarily hospitalized for mental illness pursuant to Chapter 5 of Title 21; or

(2) Has an intellectual disability or has been determined by a court to be incompetent to refuse commitment under Chapter 13 of Title 7.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; Sept. 22, 1989, D.C. Law 8-34, § 2(b), 36 DCR 5035; Oct. 22, 2008, D.C. Law 17-249, § 2(a), 55 DCR 9206; Sept. 26, 2012, D.C. Law 19-169, § 21(h)(1), 59 DCR 5567.)

Effect of amendments.

The 2012 amendment by D.C. Law 19-169 substituted "Citizens with Intellectual Disabilities" for "Mentally Retarded Citizens" in (b); and substituted "an intellectual disability" for "mental retardation" in (d)(2).

Legislative history of Law 19-169. — Law

19-169, the "People First Respectful Language Modernization Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-189. The Bill was adopted on first and second readings on Mar. 6, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 15, 2012, it was assigned Act No. 19-361 and

transmitted to Congress for its review. D.C. Law 19-169 became effective on Sept. 26, 2012.

Editor's notes.

Section 21(h)(1) purported to amend (d)(1) by substituting "developmental disability" for "mental retardation"; as that language does not appear in (d)(1), but does appear in (d)(2),

LexisNexis believes the legislative intent was to amend that subsection, and has effected the change there.

Section 35 of D.C. Law 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

Subchapter II. Definitions.

§ 21-2011. Definitions.

For the purposes of this chapter, the term:

(1) "Best interests" means promoting personal well-being by assessing:

(A) The reason for the proposed action, its risks and benefits, and any alternatives considered and rejected; and

(B) The least intrusive, least restrictive, and most normalizing course of action possible to provide for the needs of the individual.

(1A) "Claims" in respect to a protected individual, means liabilities of the protected individual, whether arising in contract, tort, or otherwise, and liabilities of the estate that arise at or after the appointment of a conservator, including expenses of administration.

(2) "Court" means the Superior Court of the District of Columbia.

(3) "Conservator" means a person who is appointed by a court to manage the estate of a protected individual and includes a limited conservator described in section 21-2066(a).

(4) "Counsel" means an attorney admitted to the practice of law in the District.

(5) "District" means District of Columbia.

(5A) "Domestic partner" shall have the same meaning as provided in § 32-701(3).

(5B) "Domestic partnership" shall have the same meaning as provided in § 32-701(4).

(5C) "Emergency care" means immediate treatment, including diagnostic treatment, provided in response to a sudden and acute medical crisis in order to avoid injury, extreme pain, impairment, or death.

(6) "Estate" means the property of the individual whose affairs are subject to this chapter.

(7) "Examiner" means an individual qualified by training or experience in the diagnosis, care, or treatment of the causes and conditions giving rise to the alleged incapacity, such as a gerontologist, psychiatrist, or qualified developmental disability professional.

(8) "Guardian" means a person who has qualified as a guardian of an incapacitated individual pursuant to court appointment, not including a guardian ad litem, but including:

(A) A temporary guardian appointed as described in section 21-2046 for a finite period of time to serve as:

(i) An emergency guardian whose authority may not extend beyond 21 days and who may exercise any powers granted by court order and not prohibited by law;

(ii) A health-care guardian whose authority is granted for up to 90 days and may be extended for up to an additional 90 days to provide substituted consent in accordance with section 21-2210 for an individual certified as incapacitated for a health-care decision; or

(iii) A provisional guardian whose authority is granted for a specified period not to exceed 6 months, upon the court's finding that any guardian is not effectively performing duties and that the welfare of the incapacitated individual requires immediate action;

(B) A general guardian not limited by the court in scope as described in section 21-2044(c) or in time as described in section 21-2046; and

(C) A limited guardian whose powers are limited by the court as described in section 21-2044(c) and who is appointed for a finite period of time as described in section 21-2046 or for an indeterminate period of time.

(9) "Guardian ad litem" means an individual appointed by the court to assist the subject of an intervention proceeding to determine his or her interests in regard to the guardianship or protective proceeding or to make that determination if the subject of the intervention proceeding is unconscious or otherwise wholly incapable of determining his or her interest in the proceeding even with assistance.

(10) "Habilitation" means the process by which an individual is assisted to acquire and maintain those life skills that enable him or her to cope more effectively with the demands of his or her own person and of his or her own environment and to raise the level of his or her physical, intellectual, social, emotional, and economic efficiency.

(11) "Incapacitated individual" means an adult whose ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that he or she lacks the capacity to manage all or some of his or her financial resources or to meet all or some essential requirements for his or her physical health, safety, habilitation, or therapeutic needs without court-ordered assistance or the appointment of a guardian or conservator.

(11A) "Incapacitated individual for health-care decisions" means an adult individual who lacks sufficient mental capacity to:

(A) Appreciate the nature and implications of a health-care decision;

(B) Make a choice regarding the alternatives presented; or

(C) Communicate that choice in an unambiguous manner.

(12) "Intervention proceeding" means any proceeding under this chapter.

(13) "Lease" means an oil, gas, or other mineral lease.

(14) "Letters" means letters of guardianship and letters of conservatorship.

(15) "Manage financial resources" means those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income.

(16) "Meet essential requirements for physical health or safety" means those actions necessary to provide health care, food, shelter, clothing, personal hygiene, and other care without which serious physical injury or illness is more likely than not to occur.

(17) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as collateral.

(18) “Organization” includes a corporation, business trust, estate, trust, partnership, association, 2 or more persons having a joint or common interest, government, governmental subdivision or agency, or any other legal entity.

(19) “Person” means an individual or an organization.

(20) “Petition” means a written request to the court for an order after notice.

(21) “Property” means anything that may be the subject of ownership, and includes both real and personal property and any interest in real or personal property.

(22) “Protected individual” means an individual for whom a conservator has been appointed or other protective order has been made as provided in sections 21-2055 and 21-2056.

(23) “Protective proceeding” means a proceeding under the provisions of subchapter VI of this chapter.

(24) “Qualified developmental disability professional” means:

(A) A psychologist with at least a master’s degree from an accredited program and with specialized training or 1 year of experience in intellectual disabilities;

(B) A physician licensed to practice medicine in the District and with specialized training in intellectual disabilities or with 1 year of experience in treating individuals with intellectual disabilities;

(C) An educator with a degree in education from an accredited program and with specialized training or 1 year of experience in working with individuals with intellectual disabilities;

(D) A social worker with:

(i) A master’s degree from a school of social work accredited by the Council on Social Work Education (New York, New York), and with specialized training in intellectual disabilities or with 1 year of experience in working with individuals with intellectual disabilities; or

(ii) A bachelor’s degree from an undergraduate social work program accredited by the Council on Social Work Education who is currently working and continues to work under the supervision of a social worker as defined in subparagraph (D)(i) and who has specialized training in intellectual disabilities or 1 year of experience in working with individuals with intellectual disabilities;

(E) A rehabilitation counselor who is certified by the Commission on Rehabilitation Counselor Certification (Chicago, Illinois) and who has specialized training in intellectual disabilities or 1 year of experience in working with individuals with intellectual disabilities;

(F) A physical or occupational therapist with a bachelor’s degree from an accredited program in physical or occupational therapy and who has specialized training or 1 year of experience in working with individuals with intellectual disabilities; or

(G) A therapeutic recreation specialist who is a graduate of an accredited program and who has specialized training or 1 year of experience in working with individuals with intellectual disabilities.

(25) “Security” means any:

- (A) Note;
- (B) Stock;
- (C) Treasury stock;
- (D) Bond debenture;
- (E) Evidence of indebtedness;
- (F) Certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease;
- (G) Collateral trust certificate;
- (H) Transferable share;
- (I) Voting trust certificate; or
- (J) Interest or instrument commonly known as a security, certificate of interest or participation, temporary or interim certificate, receipt, certificate of deposit for, or any warrant or right to subscribe to or purchase any of the foregoing.

(25A) “Substituted judgment” means making a decision that conforms as closely as possible with the decision that the individual would have made, based upon the knowledge of the beliefs, values, and preferences of the individual.

(26) “Visitor” means a person appointed in a guardianship or protective proceeding who is an officer, employee, or special appointee of the court and who has no personal interest in the proceeding.

(27) “Ward” means an individual for whom a guardian has been appointed.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; Mar. 24, 1998, D.C. Law 12-81, § 14(r), 45 DCR 745; Apr. 4, 2006, D.C. Law 16-79, § 7(a), 53 DCR 1035; Apr. 24, 2007, D.C. Law 16-305, § 35(c)(1), 53 DCR 6198; Oct. 22, 2008, D.C. Law 17-249, § 2(b), 55 DCR; Sept. 26, 2012, D.C. Law 19-169, § 21(h)(2), 59 DCR 5567.)

Section references. — This section is referenced in § 7-1901 and § 21-2051.

Effect of amendments.

The 2012 amendment by D.C. Law 19-169 substituted “developmental disability” for “mental retardation” in (7) and in the introductory language of (24); and substituted “intellectual disabilities” for “mental retardation” wherever it appears in (24).

Legislative history of Law 19-169. — See note to § 21-2002.

Editor’s notes. — Section 35 of D.C. Law 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

Subchapter V. Guardians of Incapacitated Individuals.

§ 21-2041. Procedure for court-appointment of a guardian of an incapacitated individual.

(a) An incapacitated individual or any person interested in the welfare of the incapacitated individual may petition for appointment of a guardian, either limited, temporary, or general.

(b) The petition shall state the name, address, and interest of the petitioner, state the name, age, residence, and address of the individual for whom a

guardian is sought, and set forth the reasons for which the guardianship is sought with specific particularity so as to enable the court to determine what class of examiner and visitor should examine the person alleged to be incapacitated.

(c) The petition shall be served upon the subject of the petition, by first class mail, within 3 days of its filing. Proof of service is to be by certificate of service.

(d) After the filing of a petition, the court shall set a date for hearing on the issue of incapacity so that notice may be given as required by section 21-2042 and, unless the allegedly incapacitated individual is represented by counsel, the court shall appoint an attorney to represent the individual in the proceeding. The court shall appoint an appropriately qualified examiner who shall submit a report in writing to the court. The individual alleged to be incapacitated also shall be interviewed by a visitor appointed by the court. The examiner and the visitor shall be separate persons. The court may waive the appointment of a visitor and, where a report has been submitted in writing to the court for the allegedly incapacitated individual, the court may waive the appointment of an examiner. The court shall waive, absent good cause shown, the appointments of a visitor and examiner if the petition seeks appointment of an emergency guardian or a health-care guardian and the petition is supported by the certification of incapacity made pursuant to section 21-2204.

(e) The court may utilize the services of additional visitors to evaluate the condition of the allegedly incapacitated individual and to make appropriate recommendations to the court.

(f) In the case of an individual whose incapacity is alleged to arise out of an intellectual disability, preference is for the appointment of an examiner and visitor who are qualified developmental disability professionals and who can collectively give a complete social, psychological, and medical evaluation of the individual. The court may waive the appointment of a visitor and, where a current individual habilitation plan prepared pursuant to section 7-1304.03 is submitted to the court, the court may waive the appointment of an examiner.

(g) For any individual alleged to be incapacitated, any current social, psychological, medical, or other evaluation used for diagnostic purposes or in the development of a current plan of treatment or any current plan of treatment shall be presented as evidence to the court. For an individual alleged to be incapacitated for health-care decisions, the certification of incapacity made pursuant to section 21-2204 shall be presented as evidence to the court.

(h) An individual alleged to be incapacitated shall be present at the hearing unless good cause is shown for the absence. The individual shall be represented by counsel and is entitled to present evidence and to cross-examine witnesses, including any court-appointed examiner or visitor. The hearing may be closed if the individual alleged to be incapacitated or counsel for the individual so requests.

(i) Any person may apply for permission to participate in the proceeding, and the court may grant the request, with or without hearing, upon determining that the best interest of the alleged incapacitated individual will be served. The court may attach appropriate conditions to the permission.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; Sept. 22, 1989, D.C. Law 8-34, § 2(f)-(g), 36 DCR 5035; Apr. 24, 2007, D.C. Law 16-305, § 35(c)(2), 53 DCR 6198; Oct. 22, 2008, D.C. Law 17-249, § 2(c), 55 DCR 9206; Sept. 26, 2012, D.C. Law 19-169, § 21(h)(3), 59 DCR 5567.)

Section references. — This section is referenced in § 7-1231.07 and § 21-2046.

Effect of amendments.

The 2012 amendment by D.C. Law 19-169, in the first sentence of (f), substituted “an intellectual disability” for “mental retardation” and “Qualified developmental disability professional” for “Qualified mental retardation professional.”

The 2012 amendment by D.C. Law 19-169, in the first sentence of (f), substituted “an intellectual disability” for “mental retardation” and “Qualified developmental disability profes-

sional” for “Qualified mental retardation professional.”

Legislative history of Law 19-169. — See note to § 21-2002.

Legislative history of Law 19-169. — See note to § 21-2002.

Editor’s notes.

Section 35 of D.C. Law 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

Section 35 of D.C. Law 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

Subchapter VI. Protection of Property of Incapacitated, Disappeared or Detained Individuals.

§ 21-2054. Procedure concerning hearing and order on original petition.

(a) Upon receipt of a petition for appointment of a conservator or other protective order, the court shall set a date for a hearing. Unless the individual to be protected has chosen counsel, the court shall appoint an attorney to represent the individual. Except where the incapacity is alleged to be by disappearance or detention by a foreign power, the court may appoint an appropriately qualified examiner who shall submit a written report to the court. Except where the incapacity is alleged to be by disappearance or detention by a foreign power or someone other than a foreign power, the court may appoint a visitor who shall submit a written report to the court. If an examiner and a visitor are appointed for an individual, the examiner and visitor shall be separate persons.

(b) The court may utilize the services of additional visitors to evaluate the condition of the allegedly incapacitated individual and to make appropriate recommendations to the court.

(c) In the case of an individual whose incapacity is alleged to arise out of an intellectual disability, preference is for the appointment of an examiner and visitor who are qualified developmental disability professionals and who can collectively give a complete social, psychological, and medical evaluation of the individual. When the individual alleged to have an intellectual disability has a current comprehensive evaluation or habilitation plan, the plan shall be presented as evidence to the court. When a plan exists but has not been updated within 6 months prior to the hearing, preference is for an update of the plan as part of the examination conducted by the examiner and visitor.

(d) For other individuals alleged to be incapacitated, any current social, psychological, medical, or other evaluation used for diagnostic purposes or in

the development of a current plan of treatment, or any current plan of treatment shall be presented as evidence to the court.

(e) An individual alleged to be incapacitated shall be present at the hearing unless good cause is shown for the absence. The individual shall be represented by counsel and is entitled to present evidence and cross-examine witnesses, including any court-appointed examiner or visitor. The hearing may be closed if the individual alleged to be incapacitated or counsel for the individual so requests.

(f) Any person may apply for permission to participate in the proceeding and the court may grant the request, with or without hearing, upon determining that the best interest of the individual to be protected will be served. The court may attach appropriate conditions to the permission.

(g) After the hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; Sept. 22, 1989, D.C. Law 8-34, § 2(i), 36 DCR 5035; Feb. 22, 1990, D.C. Law 8-63, § 2, 36 DCR 7718; May 15, 1990, D.C. Law 8-123, § 2, 37 DCR 2085; Apr. 24, 2007, D.C. Law 16-305, § 35(c)(3), 53 DCR 6198; Sept. 26, 2012, D.C. Law 19-169, § 21(h)(4), 59 DCR 5567.)

Effect of amendments.

The 2012 amendment by D.C. Law 19-169, in (c), substituted “an intellectual disability” for “mental retardation” in the first and second sentences and substituted “qualified developmental disability professional” for “qualified mental retardation professional” in the first sentence.

Legislative history of Law 19-169. — See note to § 21-2002.

Editor’s notes.

Section 35 of D.C. Law 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

§ 21-2060. Compensation and expenses.

(a) As approved by order of the court, any visitor, attorney, examiner, conservator, special conservator, guardian ad litem, or guardian is entitled to compensation for services rendered either in a guardianship proceeding, protective proceeding, or in connection with a guardianship or protective arrangement. Any guardian or conservator is entitled to reimbursement for room, board, and clothing personally provided to the ward from the estate of the ward, but only as approved by order of the court. Compensation shall be paid from the estate of the ward or person or, if the estate of the ward or person will be depleted by payouts made under this subsection, from a fund established by the District.

(a-1) The estate of a person or ward shall be presumed to be depleted for purposes of this chapter, and all compensation, expenses, and payouts made under this section shall be paid from a fund established by the District:

(1) If the person or ward qualifies for federal Supplemental Security Income under Title XVI of the Social Security Act [42 U.S.C. § 1381 et seq.];

(2) If the person or ward qualifies for Medicaid or Medicaid Expansion Programs as allowed by federal, state, or local requirements,

(3) If the person or ward qualifies for other means-tested public assistance programs as allowed by federal, state, or local requirements, including, Temporary Assistance for Needy Families, Interim Disability Assistance, Food Stamps, and D.C. Healthcare Alliance;

(4) If the person or ward qualifies for federal disability benefits, including Old Age, Survivors, and Disability Insurance Benefits under Title II of the Social Security Act [42 U.S.C. § 401 et seq.], Rehabilitation Services Administration Payments, Railroad Retirement Board, or Veterans benefits and such benefits constitute the person or ward's sole source of income;

(5) If the person or ward has been found to be unable to pay for habilitation, care, or legal services by any branch of the Superior Court of the District of Columbia; or

(6) If the circumstances listed in paragraphs (1), (2), (3), (4), and (5) of this subsection do not apply, the person or ward may establish, by affidavit or other proof satisfactory to the court, the inability to pay any costs without substantial financial hardship to himself or herself or his or her family.

(b) There is established within the General Fund of the District of Columbia a separate account to be known as the "Guardianship Fund" ("Fund") and to be administered by the court. There is authorized to be appropriated funds necessary for the administration of this section.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; July 25, 1987, D.C. Law 7-17, § 2(a), 34 DCR 3802; Oct. 22, 2008, D.C. Law 17-249, § 2(j), 55 DCR 9206; Sept. 26, 2012, D.C. Law 19-171, § 76, 59 DCR 6190.)

Section references. — This section is referenced in § 21-2047.

Effect of amendments.

The 2012 amendment by D.C. Law 19-171 added a comma following "requirements" in (a-1)(3).

Legislative history of Law 19-171. — Law 19-171, the "Technical Amendments Act of

2012," was introduced in Council and assigned Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

CHAPTER 22. HEALTH-CARE DECISIONS.

Sec.
21-2203. Presumption of capacity.

Sec.
21-2210. Substituted consent.

§ 21-2203. Presumption of capacity.

An individual shall be presumed capable of making health-care decisions unless certified otherwise under § 21-2204. Mental incapacity to make a health-care decision shall not be inferred from the fact that an individual:

(1) Has been voluntarily or involuntarily hospitalized for mental illness pursuant to § 21-501 et seq.;

(2) Has a diagnosis of an intellectual disability or has been determined by a court to be incompetent to refuse commitment under § 7-1301.01 et seq.; or

(3) Has a conservator or guardian appointed pursuant to § 21-1501 et seq. [repealed] or § 21-2001 et seq.

(Mar. 16, 1989, D.C. Law 7-189, § 4, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(d), 40 DCR 6311; Apr. 24, 2007, D.C. Law 16-305, § 35(d), 53 DCR 6198; Sept. 26, 2012, D.C. Law 19-169, § 21(i), 59 DCR 5567.)

Effect of amendments.

The 2012 amendment by D.C. Law 19-169 substituted “an intellectual disability” for “mental retardation” in (2).

Legislative history of Law 19-169. — Law 19-169, the “People First Respectful Language Modernization Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-189. The Bill was adopted on first and sec-

ond readings on Mar. 6, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 15, 2012, it was assigned Act No. 19-361 and transmitted to Congress for its review. D.C. Law 19-169 became effective on Sept. 26, 2012.

Editor’s notes. — Section 35 of D.C. Law 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

§ 21-2210. Substituted consent.

(a) In the absence of a durable power of attorney for health care and provided that the incapacity of the principal has been certified in accordance with § 21-2204, the following individuals, in the order of priority set forth below, shall be authorized to grant, refuse or withdraw consent on behalf of the patient with respect to the provision of any health-care service, treatment, or procedure:

(1) A court-appointed guardian or conservator of the patient, if the consent is within the scope of the guardianship or conservatorship;

(1A) A court-appointed intellectual disability advocate of the patient, if the ability to grant, refuse, or withdraw consent is within the scope of the advocate’s appointment under section 7-1304.13.

(2) The spouse or domestic partner of the patient;

(3) An adult child of the patient;

(4) A parent of the patient;

(5) An adult sibling of the patient;

(5A) A religious superior of the patient, if the patient is a member of a religious order or a diocesan priest;

(5B) A close friend of the patient; or

(6) The nearest living relative of the patient.

(b) A decision to grant, refuse or withdraw consent made pursuant to subsection (a) of this section shall be based on the known wishes of the patient or, if the wishes of the patient are unknown and cannot be ascertained, on a good faith belief as to the best interests of the patient.

(c) There shall be at least 1 witness present whenever a person specified in subsection (a)(2) through (6) of this section grants, refuses or withdraws consent on behalf of the patient.

(d) If no individual in a prior class is reasonably available, mentally capable and willing to act, responsibility for decisionmaking shall rest with the next reasonably available, mentally capable, and willing person on the priority list.

(e) Any person listed in subsection (a) of this section shall have legal standing to challenge in the Superior Court of the District of Columbia any decision made by a person of higher priority as listed within that subsection.

(f) The order of priority established in subsection (a) of this section creates a presumption that may be rebutted if a person of lower priority is found to have better knowledge of the wishes of the patient, or, if the wishes of the patient are unknown and cannot be ascertained, is better able to demonstrate a good-faith belief as to the interests of the patient.

(g) An individual identified in subsection (a)(5B) of this section shall not be authorized to grant, refuse, or withdraw consent on behalf of the patient with respect to a decision regarding a health-care service, treatment, or procedure if the individual is:

(1) A health-care provider who is treating or providing services to the incapacitated patient at the time of the health-care decision; or

(2) An owner, operator, administrator, or employee of, or a person with decision-making authority for, a health-care provider treating or providing services to the incapacitated patient at the time of the health-care decision.

(h) If no person listed in subsection (a) of this section is reasonably available, mentally capable, and willing to act, the health-care provider, or the District of Columbia, for those persons committed or admitted to receive habilitation or other services pursuant to Chapter 13 of Title 7, or any interested person may petition the Superior Court of the District of Columbia for appointment of a guardian pursuant to section 21-2044 or section 21-2046.

(i) The health-care provider who is treating or providing services to the incapacitated patient at the time of the health-care decision shall accept the decision of the individual authorized under this section to grant, refuse, or withdraw consent on behalf of the patient as the decision of the principal.

(Mar. 16, 1989, D.C. Law 7-189, § 11, 35 DCR 8653; Mar. 11, 1992, D.C. Law 9-67, § 2(b), 39 DCR 12; Feb. 5, 1994, D.C. Law 10-68, § 23(k), 40 DCR 6311; June 21, 2003, D.C. Law 15-17, § 2(b), 50 DCR 3387; Mar. 13, 2004, D.C. Law 15-105, § 106, 51 DCR 881; Oct. 22, 2008, D.C. Law 17-249, § 3(c), 55 DCR 9206; Sept. 26, 2012, D.C. Law 19-171, § 77, 59 DCR 6190.)

Section references. — This section is referenced in § 7-651.01, § 7-1231.02, § 7-1231.06, § 7-1231.07, § 7-1301.03, § 7-1305.04, § 7-1305.06a, § 7-1305.06b, § 7-1305.06c, § 7-1305.07a, § 21-2011, § 21-2046, § 21-2047.02, and § 21-2211.

Effect of amendments.

The 2012 amendment by D.C. Law 19-171 validated a previously made technical correction in (a)(1A).

Legislative history of Law 19-171. — Law 19-171, the “Technical Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

